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October 20, 2020

Honorable Anne Y. Shields  
United States Magistrate Judge  
Eastern District of New York  
100 Federal Plaza, Courtroom 830  
Central Islip, New York 11722

FILED  
IN CLERK'S OFFICE  
U.S. DISTRICT COURT E.D.N.Y.

★ OCT 22 2020 ★

LONG ISLAND OFFICE

Re: *Rozz v. County of Nassau, et al.*  
EDNY Docket No. 20-cv-01812 JMA-AYS

Dear Magistrate Judge Shields:

This is a request for a pre-motion conference so I (the plaintiff) can file a motion for sanctions against defendant Ryan Costigan and his counsel concerning a knowingly false statement on a material issue that counsel made to Your Honor in Doc. 10 which resulted in an undeserved benefit to Costigan and an increase in litigation costs to me.

**The knowingly false factual contention**

The deadline for defendant Costigan to answer the complaint as of right was July 15, 2020 [Doc. 8].

On July 16, 2020, Costigan's counsel filed a letter telling Your Honor that Costigan's answer was due not on July 15, 2020, but rather on July 16, 2020 [Doc. 9 ¶2].

On July 17, 2020, at 9:59 a.m., I emailed Costigan's counsel alerting counsel to the misstatement and insisting that the misstatement be corrected.

One minute later at 10:00 a.m. [Doc. 10-1], Costigan's counsel received, read and understood my email [Doc. 10 ¶1].

Forty-one minutes later at 10:41 a.m., Costigan's counsel, rather than withdraw the false factual contention, filed a second letter telling Your Honor the same factual contention [Doc. 10 ¶3].

The factual contention by Costigan's counsel:

- Has no evidentiary support;
- Is demonstrably false [Doc. 8]; and
- Is on a material issue:

JUDGE SHIELDS: Adjournments and Extensions of Time... All requests for adjournments *must* include the... original date of the appearance or deadline (emphasis added) [Individual Rule III(1)].

### **Why Costigan's counsel did it**

Costigan's counsel knowingly deceived Your Honor for the purpose of:

- Getting an undeserved extension of time to answer the complaint [Doc. 10, ¶2]; and
- Skipping and defeating established procedure which required that Costigan's postdeadline request be made by motion, not letter, and that such motion:
  - Be served at least 14 days before the hearing thereon (Rule 6[c][1]);
  - Include a certificate of service by mail (Rule 5[d][1][B][i]);
  - Include a supporting affidavit (Rule 6[c][2]);
  - Show "extraordinary circumstances" (Individual Rule III, LR 6.1[d]);
  - Show "good cause" and "excusable neglect" (Rule 6[b][1][B]); and
  - Indicate defendant County's position on the request (Individual Rule III[3]).

### **How Costigan's counsel avoided detection**

If I would have received notice of Costigan's counsel's request before Your Honor decided it on 7/20/2020, then I would have alerted Your Honor to its falsity.

With that in mind, Costigan's counsel avoided detection by:

- Creating the *false* impression that I received notice of the request by email [Doc. 10 ¶1: "I forwarded a courtesy copy to the Plaintiff's stated email address"];
- Not notifying me of the request by telephone;
- Not notifying me of the request in person; and
- Dropping the request in the mail for later delivery to me on 7/22/2020.

### **The result**

As a result of Costigan's counsel's knowingly false factual contention:

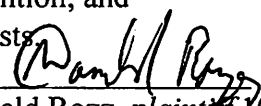
- Costigan received a benefit [Order entered 7/20/2020]. and
- I received an increase in litigation costs [Order entered 9/29/2020 requiring Doc. 16].

But for Costigan's counsel's deception:

- This court would not have extended Costigan's time to answer the complaint; and
- I would not have had to file opposition [Doc. 16] to Costigan's pre-motion conference letter [Doc. 14].

Costigan and/or his counsel should be directed to:

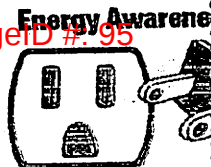
- Withdraw or correct the false factual contention;
- Withdraw Doc. 10 which contains the false factual contention; and
- Compensate me for the resulting increase in litigation costs.

  
Donald Rozz, plaintiff 10/20/2020

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United States District Court  
Eastern District of New York  
Long Island Courthouse  
100 Federal Plaza  
Central Islip, New York 11722

ATTN: Pro Se Office

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